

UNITED STATES ENVIRONMENTAL PROTECTION AGENCY  
REGION VII

901 NORTH 5<sup>TH</sup> STREET 02 DEC 10 AM 10: 52  
KANSAS CITY, KANSAS 66101  
BEFORE THE ADMINISTRATOR

ENVIRONMENTAL PROTECTION  
AGENCY-REGION VII  
REGIONAL HEARING CLERK

IN THE MATTER OF )

The City of Platte City, Missouri )

Respondent )

Docket No. CWA-07-2002-0137

CONSENT AGREEMENT AND CONSENT ORDER

The above listed proceeding for the assessment of civil penalties was initiated pursuant to Section 309(g) of the Federal Water Pollution Control Act, commonly referred to as the Clean Water Act (hereafter "CWA"), 33 U.S.C. § 1319(g), when the United States Environmental Protection Agency (hereafter "Complainant" or "EPA") issued to the City of Platte City, Missouri (hereafter "Respondent"), a Complaint and Notice of Opportunity for Hearing on May 22, 2002.

The Complaint charged Respondent with violations of Section 301 and 402 of the CWA, 33 U.S.C. §§ 1311 and 1342. The Complaint proposed a total civil penalty of Sixty Thousand Dollars (\$60,000) for these violations.

The following Consent Agreement and Consent Order is the result of such negotiations and represents full and complete settlement of liability and penalty for all causes of action which arose out of the factual allegations set forth in the administrative claims alleged in the Complaint.

CONSENT AGREEMENT

The Complainant and Respondent hereby agree as follows:

1. Respondent admits the jurisdictional allegations of the Complaint.
2. This Consent Agreement and Consent Order shall apply to and be binding upon Respondent, its officers, directors, successors and assigns.
3. Respondent neither admits or denies the factual allegations set forth in the Complaint, which is incorporated herein by reference.

4. Respondent certifies by the signing of this Consent Agreement that it is in compliance with the requirements of Sections 301 and 402 of the CWA, 33 U.S.C. § 1311 and 1342.

5. Respondent waives its right to a judicial or administrative hearing on any issue of fact or law set forth in the Complaint.

6. In settlement of this matter, Respondent agrees that on or before the dates set forth below, it will complete the following Supplemental Environmental Projects ("SEPs") which the parties agree to is intended to serve significant environmental or public health protection and improvement.

7. The Supplemental Environmental Projects (SEPs) to be completed by Respondent, subject to approval of the Board of Aldermen, include:

A. Cleaning, grading, installation of any needed erosion controls and adjusting the flow line and enlarging the culvert under Highway 92 near Casey's (See attached map marked Exhibit A; area covered by this SEP is highlighted in blue.) The proposed time frame for completing this SEP is two (2) years from date of this Consent Order. The estimated cost of this SEP is \$100,000.

B. Establishment of a greenway/storm drainage easement on property owned by Respondent. The drains leading to the Platte River will be cleaned up, regraded and erosion controls will be installed and maintained. (See attached map marked Exhibit A; area covered by this SEP is highlighted in green.) The proposed time frame for completing this SEP is one (1) year from date of this Consent Order. The estimated cost of this SEP is \$35,000.

8. Respondent hereby certifies that, as of the date of this Consent Agreement, Respondent is not required to perform or develop these SEPs by any federal, state or local laws or regulation; nor is Respondent required to perform or develop the SEP by any other agreement, grant or an injunctive relief in this or any other case. Respondent further certifies these SEPs were not commenced or completed prior to notice of the enforcement action.

9. Respondent shall submit a Periodic Report every six (6) months beginning six (6) months after the date of this Consent Order providing the status of each SEP described in Paragraph 7 including what has been completed, what remains to be completed and the estimated time frame for completion.

10. Respondent shall submit SEP Completion Reports within forty-five (45) days of the completion of each SEP outlined in Paragraph 7. The Reports shall contain the following information:

- i. Description of SEP completed;
- ii. Itemized costs;
- iii. Certification that the SEP was fully implemented pursuant to the provisions of this Consent Agreement and Consent Order.

11. Respondent agrees that EPA may inspect the SEP projects at any time in order to confirm that the SEPs are being undertaken in accordance with this Consent Order.

12. Respondent agrees that if the SEPs described in Paragraph 7 are not completed in a substantially satisfactory manner or Respondent has not made a good faith, timely effort to implement the SEPs, Respondent shall pay the remainder of the proposed penalty, \$45,000. The determinations of whether the SEPs have been substantially satisfactorily completed and whether the Respondent has made a good faith and timely effort to implement the SEPs is within the discretion of EPA. The determination will not be unreasonably withheld or denied in bad faith.

13. EPA has considered the appropriateness of the penalty pursuant to Section 309(g) of the CWA, 33 U.S.C. § 1319(g), and has determined that the appropriate penalty for this settlement of the violations set forth in the subject Complaint is Fifteen Thousand Dollars (\$15,000). Payment of this penalty and completion of agreed to SEPs as set forth herein shall satisfy all claims arising out of the facts alleged in the Complaint.

14. Respondent and Complainant agree to pay their own costs and attorney's fees incurred as a result of these actions.

15. Respondent consents to the issuance of the Order hereinafter recited and consents to the payment of the civil penalty and performance of the SEPs as set forth in this Consent Agreement and Consent Order.

16. Each signatory to this Agreement certifies that he or she is fully authorized to enter into the terms and conditions of this Consent Agreement and Consent Order.

#### CONSENT ORDER

Pursuant to Section 309(g) of the CWA, 33 U.S.C. § 1319(g), and based upon information contained in this Consent Agreement, IT IS HEREBY ORDERED THAT:

1. Respondent shall comply with the requirements of Sections 301 and 402 of the CWA, 33 U.S.C. §§ 1311 and 1342 during the period this Order is in effect.

2. Respondent certifies that it shall complete subject to approval of the Board of Aldermen, the Supplemental Environmental Projects ("SEPs") as described in Paragraph 7 of the foregoing Consent Agreement on or before the scheduled dates of completion for such so described in Paragraph 7.

3. Respondent shall, no later than forty-five (45) days following completion of each SEP described in Paragraph 7 of the Consent Agreement, submit to EPA a statement complying with the terms of Paragraph 10 of the Consent Agreement, verifying that each SEP has been completed per the terms of this Consent Agreement and Consent Order. Such statement shall be submitted to Jenna Wischmeyer, Assistant Regional Counsel, at the address indicated below.

4. If the SEPs described in Paragraph 7 of the Consent Agreement are not completed in a substantially satisfactory manner or Respondent has not made a good faith, timely effort to implement the SEPs, Respondent shall pay the remainder of the proposed penalty. The determinations of whether the SEPs have been completed in a substantially satisfactory manner and whether the Respondent has made a good faith and timely effort to implement the SEPs is within the discretion of EPA. The determination will not be unreasonably withheld or denied in bad faith. In the event Respondent fails to complete any SEP required by this Consent Order on or before its scheduled date of completion, Respondent shall pay the remainder of the proposed penalty, (\$60,000 - \$15,000 = \$45,000) immediately upon written direction and demand by EPA.

5. Respondent shall pay a total administrative civil penalty of Fifteen Thousand Dollars (\$15,000) within thirty (30) days of receipt of a copy of this fully executed Consent Agreement and Consent Order. Payment shall be by cashier's or certified check, made payable to "Treasurer, United States of America," and referencing EPA Docket No. CWA-07-2002-0137, and remitted to:

EPA - Region VII  
c/o Mellon Bank  
P.O. Box 360748M  
Pittsburgh, Pennsylvania 15251

A copy of the check shall be mailed to:

Martha R. Steincamp  
Regional Counsel  
U.S. Environmental Protection Agency  
901 North 5<sup>th</sup> Street  
Kansas City, Kansas 66101

6. Failure to pay the civil penalty on the date the same is due may result in the commencement of a civil action in Federal District Court to collect said penalty, together with costs and interest thereon at the rate of five percent (5%) per annum.

7. Respondent and Complainant shall pay their own costs and attorney's fees incurred as a result of these actions.

8. Compliance with the terms of this Consent Agreement and Consent Order satisfies all claims arising out of the facts alleged in the Complaint. This Consent Agreement and Consent Order shall terminate after satisfaction by Respondent of the Requirements of this Consent Order.

9. This executed Consent Agreement and Consent Order shall be filed with the Regional Hearing Clerk, U.S. Environmental Protection Agency, 901 North 5<sup>th</sup> Street, Kansas City, Kansas 66101.

**COMPLAINANT:**  
UNITED STATES ENVIRONMENTAL  
PROTECTION AGENCY

By: 

Leo J. Alderman

Director

Water, Wetlands and Pesticides Division

Date: 12/5/02

By: 

Martha R. Steincamp

Regional Counsel

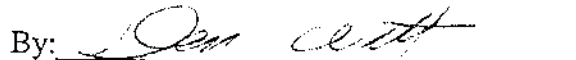
Date: 12/3/02

RESPONDENT  
THE CITY OF PLATTE CITY, MISSOURI

By: 


Title: Mayor

Date: 11/26/02

By:   
Don Witt, Attorney for Respondent

Date: 11/29/02

IT IS SO ORDERED. This Order shall become effective immediately.

  
Robert L. Patrick  
Regional Judicial Officer  
Region VII

Date: December 10, 2002

CERTIFICATE OF SERVICE

I certify that on the date indicated below, I hand delivered the original and one true copy of this Consent Agreement and Consent Order to the Regional Hearing Clerk, United States Environmental Protection Agency, 901 North 5<sup>th</sup> Street, Kansas City, Kansas 66101.

I further certify that on the date noted below I sent by certified mail, return receipt requested, a true and correct copy of the signed original Consent Agreement and Consent Order to:

Mr. Don Witt  
Witt, Hicklin and Vanover, PC  
Attorneys at Law  
Fourth at Main  
P.O. Box 1517  
Platte City, Missouri 64079

\_\_\_\_\_  
Date

IN THE MATTER OF The City of Platte City, Missouri, Respondent  
Docket No. CWA-07-2002-0137

CERTIFICATE OF SERVICE

I certify that the foregoing Consent Agreement and Consent Order was sent this day in the following manner to the addressees:

Copy hand delivered to  
Attorney for Complainant:

Martha Steincamp  
Regional Counsel  
Region VII  
United States Environmental Protection Agency  
901 N. 5<sup>th</sup> Street  
Kansas City, Kansas 66101

Copy by Certified Mail Return Receipt to:

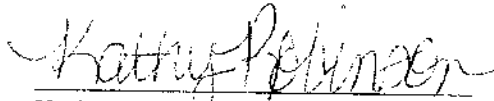
Don Witt  
Witt, Hicklin & Vanover  
Fourth at Main  
P.O. Box 1517  
Platte City, Missouri 64079

Copy by First Class Pouch Mail to:

The Honorable Susan L. Biro  
Chief Administrative Law Judge  
U. S. Environmental Protection Agency  
401 M Street, S.W./Mail Code 1900L  
Washington, D. C. 20460

The Honorable Thomas W. Hoya  
Administrative Law Judge  
U. S. Environmental Protection Agency  
401 M Street, S.W./Mail Code 1900L  
Washington, D. C. 20460

Dated: 12/10/02

  
Kathy Robinson  
Regional Hearing Clerk